

Assembly Bill No. 2173

CHAPTER 617

An act to amend Section 1799.107 of the Health and Safety Code, and amend Section 3600.4 of the Labor Code, relating to firefighters.

[Approved by Governor September 19, 1998. Filed
with Secretary of State September 21, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2173, Pacheco. Firefighters: workers' compensation.

Under existing law, a person injured in the course of employment is generally entitled to workers' compensation. Under existing law, whenever any firefighter is injured, dies, or is disabled by reason of his or her proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, the firefighter is entitled to the same benefits under provisions relating to workers' compensation that he or she would have received had that firefighter been acting under the immediate direction of his or her employer.

This bill would provide that the above provisions also apply to firefighters employed by a private entity.

Under existing law, the provision requiring the provision of benefits to local public agency firefighters does not require any benefits to be provided if the local public entity prohibits the activity giving rise to the injury, death or disability.

This bill would provide that this provision does not relieve a private or local public agency employer from liability for benefits for any injury, disability, or death of a firefighter when the firefighter is acting pursuant to a specified provision regulating emergency services.

The people of the State of California do enact as follows:

SECTION 1. Section 1799.107 of the Health and Safety Code is amended to read:

1799.107. (a) The Legislature finds and declares that a threat to the public health and safety exists whenever there is a need for emergency services and that public entities and emergency rescue personnel should be encouraged to provide emergency services. To that end, a qualified immunity from liability shall be provided for public entities and emergency rescue personnel providing emergency services.

(b) Except as provided in Article 1 (commencing with Section 17000) of Chapter 1 of Division 9 of the Vehicle Code, neither a public

entity nor emergency rescue personnel shall be liable for any injury caused by an action taken by the emergency rescue personnel acting within the scope of their employment to provide emergency services, unless the action taken was performed in bad faith or in a grossly negligent manner.

(c) For purposes of this section, it shall be presumed that the action taken when providing emergency services was performed in good faith and without gross negligence. This presumption shall be one affecting the burden of proof.

(d) For purposes of this section, “emergency rescue personnel” means any person who is an officer, employee, or member of a fire department or fire protection or firefighting agency of the federal government, the State of California, a city, county, city and county, district, or other public or municipal corporation or political subdivision of this state, or of a private fire department, whether that person is a volunteer or partly paid or fully paid, while he or she is actually engaged in providing emergency services as defined by subdivision (e).

(e) For purposes of this section, “emergency services” includes, but is not limited to, first aid and medical services, rescue procedures and transportation, or other related activities necessary to insure the health or safety of a person in imminent peril.

SEC. 2. Section 3600.4 of the Labor Code is amended to read:

3600.4. (a) Whenever any firefighter of a city, county, city and county, district, or other public or municipal corporation or political subdivision, or any firefighter employed by a private entity, is injured, dies, or is disabled from performing his or her duties as a firefighter by reason of his or her proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in this state, including the local jurisdiction in which he or she is employed, but is not at the time acting under the immediate direction of his or her employer, he or she or his or her dependents, as the case may be, shall be accorded by his or her employer all of the same benefits of this division which he or she or they would have received had that firefighter been acting under the immediate direction of his or her employer. Any injury, disability, or death incurred under the circumstances described in this section shall be deemed to have arisen out of and been sustained in the course of employment for purposes of workers’ compensation and all other benefits.

(b) Nothing in this section shall be deemed to:

(1) Require the extension of any benefits to a firefighter who at the time of his or her injury, death, or disability is acting for compensation from one other than the city, county, city and county, district, or other public or municipal corporation or political subdivision, or private entity, of his or her primary employment or enrollment.

(2) Require the extension of any benefits to a firefighter employed by a city, county, city and county, district, or other public or municipal corporation or political subdivision, or private entity, which by charter, ordinance, departmental regulation, or private employer policy, whether now in force or hereafter enacted or promulgated, expressly prohibits the activity giving rise to the injury, disability, or death. However, this paragraph shall not apply to relieve the employer from liability for benefits for any injury, disability, or death of a firefighter when the firefighter is acting pursuant to Section 1799.107 of the Health and Safety Code.

